IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

WP(C).No. 7822 of 2007(F)

PETITIONER:

TROUPER POLY VINYLE (P) LTD.,
CHERUVANNUR, KOZHIKODE, REPRESENTED BY
ITS MANAGING DIRECTOR, C.AKHILESH.

BY ADV. SRI.R.RAMADAS

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
   THE SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, KOZHIKODE.

3. **THE COMMERCIAL TAX OFFICER,**
   3RD CIRCLE, COMMERCIAL TAXES, KOZHIKODE.

BY SR.GOVT.PLEADER SRI. MOHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.7822/2007 F

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER DTD. 17/11/2003 ISSUED BY THE 3RD RESPONDENT UNDER THE KGST ACT.**

EXT.P2: **COPY OF THE ORDER DTD. 17/11/2003 ISSUEDBYTHE 3RD RESPONDENT UNDER THECST ACT.**

EXT.P3: **COPY OF THE NOTICE DTD. 17/04/2006 FROM THE 3RD RESPONDENT TO THE PETITIONER.**

EXT.P4: **COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DTD. NIL.**

EXT.P5; **COPY OF THE S.R.O.NO.295/1998 DTD. 31/03/1998.**

EXT.P6: **COPY OF THE REVISED ASSESSMENT ORDER DTD. 03/06/2006.**

EXT.P7: **COPY OF THE APPEAL DTD. 07/11/2006.**

EXT.P8: **COPY OF THE NOTICE DTD. 01/11/2006 FROM THE 3RD RESPONDENT TO THE PETITIONER.**

EXT.P9: **COPY OF THE DETAILED REPLY DTD. 14/11/2006 BEFORE THE 3RD RESPONDENT BY THE PETITIONER.**

EXT.P10: **COPY OF A LETTER DTD. 20/11/2006 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.**

EXT.P11: **COPY OF THE ORDER DTD. 07/02/2007 BY THE 2ND RESPONDENT.**

EXT.P12: **COPY OF THE REVENUE RECOVERY NOTICE DTD. 05/01/2007 ISSUED BY THE 3RD RESPONDENT.**

/TRUE COPY/

KSS

K.BALAKRISHNAN NAIR,J.

WP(C)NO.7822 OF 2007-F

Judgment

The petitioner challenges Ext.P11 order passed by the 2nd respondent appellate authority on a stay petition filed by it along with Ext.P7 appeal filed, challenging Ext.P6 revised assessment order. The petitioner submits, it is entitled to get exemption from payment of tax, but the said benefit is not extended to it because of the alleged suppression by the petitioner of a transaction detected and the penalty order passed, based on it. The petitioner moved for compounding the offence and paid the compounding fee also as per the relevant Government Order. But, the same has been rejected by Ext.P10. The petitioner submits, it is canvassing the correctness of that decision also before the appellate authority. In view of the decision of this Court in ***Sahib Rubber Industries v. State of Kerala*** (2006) 14 KTR 184 Kerala), the petitioner submits, it is entitled to move for compounding, at any time. Its application for compounding the offence has been rejected on the ground that the assessment order is already passed. So, the said ground is untenable, it is contended.

2. I heard the learned Government Pleader appearing for the respondents also. Going by the above facts, the petitioner has made out a case for absolute stay. Accordingly, it is ordered that the tax due under Ext.P6 assessment order shall not be recovered till the disposal of Ext.P7 appeal, provided, the petitioner furnishes security for the amount due under Ext.P6 within three weeks from today. The petitioner shall co-operate with the appellate authority for the disposal

of the appeal. The said authority will endeavour to pass final orders in the appeal as expeditiously as possible.

The Writ Petition is disposed of as above.

08.03.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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